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By Electronic Delivery

August 19, 2011

Honorable Jaclyn A. Brillig
Secretary to the Commission
New York State Public Service Commission
Agency Building 3, Empire State Plaza
Albany, New York 12223-1350

RE: Case 03-E-1088: Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard (SAPA No. 03-E-1088SP29)

Dear Secretary Brillig,

Pursuant to the electronic filing guidelines of the Public Service Commission of the State of New York, enclosed for filing are the comments of the Alliance for Clean Energy New York in strong opposition to the petition of Covanta Energy Corporation requesting inclusion of energy from waste (EfW) as an eligible technology in the Main Tier of New York's Renewable Portfolio Standard Program.

Sincerely,

Carol E. Murphy, Executive Director
Alliance for Clean Energy New York, Inc.

Encl.

**COMMENTS OF THE ALLIANCE FOR CLEAN ENERGY NEW YORK IN STRONG
OPPOSITON TO THE PETITION BY COVANTA ENERGY CORPORATION ON
RENEWABLE PORTFOLIO STANDARD ELIGIBILITY**

I. INTRODUCTION

The Alliance for Clean Energy New York (ACE NY) respectfully submits the following comments in the Renewable Portfolio Standard (RPS) program proceeding. ACE NY is a nonprofit organization whose mission is to promote the use of clean, renewable electricity technologies and energy efficiency in New York State in order to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. Members of ACE NY include nonprofit environmental, public health and consumer advocacy organizations, educational institutions, and private companies that develop, produce and sell renewable energy and renewable energy technologies, as well as energy efficiency services, in New York.

These comments are provided in opposition to the petition filed by Covanta Energy Corporation (Covanta),¹ which was issued with a 45-day public comment period on May 4, 2011 (followed by notice of a 60-day extension of the public comment period). The petition filed by Covanta should be rejected in its entirety. Municipal solid waste incineration *may* be a viable and preferable method of solid waste management in certain communities (though we would argue that recycling and composting are better alternatives), but it is not and should not be a

¹ Verified Petition of Covanta Energy Corporation Requesting inclusion of Energy from Waste (EfW) as an Eligible Technology in the Main Tier of New York's Renewable Portfolio Standard Program, hereafter referred to as "*Covanta Petition*."

preferred means of electricity production by the state, and should not be supported with ratepayer funds. The Commission has previously rejected this technology, most recently in 2010, and Covanta has not provided any reasonable arguments to overturn those decisions; the technology proposed for inclusion by Covanta is no different than that used by Covanta in 2003 during the original RPS proceeding. Acceptance of the petition would prevent the state from using its domestic, truly renewable and clean energy resources, and undermine public support for the state's clean energy programs.

II. MUNICIPAL SOLID WASTE INCINERATION IS NOT AN ENVIRONMENTALLY PREFERABLE METHOD OF ELECTRIC GENERATION

ACE NY's mission is to advance clean energy resources and support policies that increase reliance on these resources. Acknowledging that the state and the nation will continue for the foreseeable future to have a diverse portfolio of fuels, the organization does not take a position for or against nonrenewable energy resources. However, we believe it is completely inappropriate to even consider using RPS funds to support nonrenewable energy facilities such as garbage incinerators. The RPS was established first and foremost to promote environmentally preferable electric generation in order to improve air quality and combat climate change; economic development and energy security are very important but secondary considerations. Incineration is not an environmentally preferable method of electricity production. It is a solid waste management option that produces electricity as a byproduct, and it isn't even the preferred method of solid waste management – reduction, reuse, recycling and composting are of higher priority, more desirable and better for the environment, and conserve more energy. As others commenting in this proceeding note (e.g., comments of the Citizen's Environmental Coalition,

NYPIRG), preferred solid waste management options actually reduce more greenhouse gases and help our energy profile through conservation more than combustion does.

Truly environmentally preferable electric generation includes technologies that clearly reduce air pollutant emissions. Wind, solar, and hydropower do just that, but are often at a disadvantage relative to other new generation because of high capital costs and lengthy pre-construction planning horizons. The RPS is meant to help level the playing field in the energy markets. Garbage incinerators emit substantial amounts of pollution and collect tipping fees, as is appropriate, from local communities which choose to use incineration as a waste management option. Covanta's petition acknowledges that its economics are not based on the energy markets and therefore it has no place in making claims on funds meant to level the playing field in energy markets: "Facility economics are more influenced by plant throughput of waste than power revenues." (*Covanta Petition, p.18*) The RPS program's statewide ratepayer surcharge should not be used to support this polluting, local waste management technology.

III. MUNICIPAL SOLID WASTE INCINERATION EMITS HARMFUL POLLUTANTS AND CREATES POTENTIALLY HAZARDOUS WASTE AS A BY PRODUCT

The petition filed by Covanta makes numerous misleading and factually incorrect claims about the environmental impact of garbage incineration. Garbage incineration does in fact release numerous harmful pollutants, some of them in larger amounts than fossil generators. The emissions reductions claimed by Covanta are not the result of any technological innovation since the start of the RPS; the emissions reductions were implemented as a result of Clean Air Act requirements, and comparable reductions can be seen in fossil generators as well. Covanta itself notes that the reductions in mercury from its facilities are due not to changes in technology but to the reductions in mercury in the waste stream as a result of regulation. (*Covanta petition, p.17*)

We do not believe that garbage incinerators should be rewarded with money meant for true renewables for simply complying with overdue and possibly inadequate clean air laws meant to help protect the planet and public health from harmful emissions.

Garbage incineration releases mercury, dioxin, carbon dioxide, nitrogen oxide, and sulfur dioxide in significant quantities. In addition, incinerators produce ash that must be disposed of and monitored to determine how hazardous it is prior to disposal.

The Commission should also note that Covanta recently settled with the state of Connecticut for repeated violations of its dioxin emission/pollutant permits.² In addition, permit limits do not apply to certain periods of plant operation and maintenance, during which time the public and the environment may be subjected to significantly higher pollutant levels than those documented by Covanta.

IV. PETITIONER'S CLAIMS CONCERNING LANDFILL GAS RPS ELIGIBILITY ARE INCORRECT AND INAPPROPRIATE

The petitioner clearly cannot claim a more favorable environmental profile with respect to the resources most extensively supported by the RPS – wind energy and hydropower. They therefore attempt to argue that garbage incineration is preferable to landfill gas and given that landfill gas is already eligible, the Commission also should find garbage incineration eligible. The argument is factually incorrect, uses inappropriate comparisons, and should be rejected.

Covanta argues that its technology is “better” than landfills and landfill gas, which is already an eligible technology. This is an unfair comparison. Landfill gas that is not captured for energy is a highly potent greenhouse gas; facilitating its capture with RPS funds makes excellent environmental sense. The RPS incentives cannot actually facilitate or support new land filling. Methane production from a landfill is not ready for burning until many years after the

² See <http://www.ct.gov/dep/cwp/view.asp?Q=483234&A=4013>. Covanta agreed to pay \$400,000 and comply with specified monitoring and testing given its repeated violations.

landfill is established, so there is no way for RPS dollars to provide an incentive for landfills; rather it simply encourages methane capture from landfills that are currently venting/burning this dangerous greenhouse gas (so we would also argue that it is the gas that is eligible, not the solid waste). Furthermore, the amount of such gases available are quite small and therefore do not pose a serious threat to the state obtaining the benefits from RPS investment in truly clean resources such as wind, hydro and solar energy. On the other hand, allowing garbage incineration access to RPS funds would provide an immediate and lucrative incentive for expansion of existing plants and/or construction of new incineration facilities (and possibly payments to existing plants). This was not the intent of the RPS program, nor should it be.

V. PETITIONER’S CLAIMS CONCERNING FUEL DISPLACEMENT AND FUEL DIVERSITY ARE INCORRECT AND MISLEADING

Covanta argues that supporting garbage incineration with RPS funds will create a more environmentally favorable generation mix in New York, including support for “base load” power. While we do not believe that garbage incineration has a “better” emissions profile than fossil generation, the comparison is an erroneous one in this context regardless of the air pollutant emissions of fossil plants or incineration. If garbage incineration were found to be an eligible technology under the RPS it would not replace fossil fuel generation, but would replace emission-free generation such as wind energy and hydropower.

New York’s RPS program is highly commendable but its goal is not aggressive, nor is its financing unlimited. Despite the high percentages touted as the state’s goal for political purposes, the RPS goal is essentially to increase the use of renewable generation by 6% from 2004 to 2015. If garbage incineration becomes eligible for the RPS (which would be completely inappropriate as we argue elsewhere in these comments), incinerators winning RPS contracts would be displacing the zero-fuel and zero-emissions renewable energy resources that would

otherwise win RPS contracts. Therefore the correct comparison is between these resources and incineration, not between incineration and fossil generation.

VI. PETITIONER IGNORES COST IMPACTS AND GEOGRAPHIC BALANCE ISSUES

Covanta fails to discuss the amount of RPS dollars they believe would be needed for the technology. In fact, the petition states that the “technology is already in widespread use in New York and is closely monitored by the EPA and NYSDEC. Thus, the cost of its inclusion in the RPS program will be limited to Main Tier awards granted to EfW facilities.” (*Covanta petition, p.42*) It is shocking that those two sentences are the *only* discussion of the cost of inclusion. We also believe that statement supports a *rejection* of Covanta’s petition given that if garbage incineration (EfW) is already a well established technology in New York, there is no need for it to receive RPS funds, which are expressly meant for renewable energy technologies that are not well established and have no means of otherwise attracting sufficient capital, whereas garbage incinerators have tipping fees or other municipal support.

In addition, Covanta quite clearly does not expect approval as an eligible technology to entail only eligibility to bid for new stand-alone facilities. Rather, finding the technology eligible for RPS funds would mean that developers could receive RPS money for expansion of existing facilities and for existing facilities under the Main Tier’s maintenance resource program where they can show financial need. Showing financial need, however, could easily be “gamed” and may very well be based upon faulty business decisions or assumptions, reducing the tipping or other fees obtained from municipalities, or simply the decline in wholesale energy prices (which impacts all generators, including renewables).

The Commission chose to adopt a special RPS program for the downstate region based on geographic balance concerns. Although we believe Covanta’s petition should be rejected for

other reasons, it also holds true that acceptance of garbage incineration as an eligible technology would create a new geographic balancing issue. The majority of Covanta's plants, which upon acceptance of Covanta's petition would be eligible for RPS funds for expansions or possibly maintenance funding, are located on Long Island, and yet Long Island ratepayers do not contribute to the RPS program.

VII. PETITIONER PROVIDES MISLEADING INFORMATION ON RPS ELIGIBILITY IN OTHER STATES

The petition argues that of the over 30 states with RPS programs or goals, "18 states, including the surrounding states of Connecticut, New Jersey, Massachusetts and Pennsylvania, recognize EfW as an RPS eligible technology." (*Covanta petition, p.7*) While not factually incorrect, the statement is terribly misleading. Only seven states allow garbage incineration in the same RPS class/program (usually called Tier 1) as renewables such as wind, solar and hydropower, and none of the surrounding states listed do so.³ Furthermore, a number of the states have stricter program requirements, for instance they allow solid waste but from pyrolysis and not combustion, or have limits on the number of megawatts of incineration that will be supported (and Massachusetts currently has a moratorium). The Commission should also note that it is easier to implement these types of restrictions in the more traditional RPS programs in other states where the RPS is accomplished by mandates on utilities to purchase specified energy types in specified amounts. In New York, this is a statewide program administered by state agencies and implemented through statewide competitive auctions, not individual utility purchase decisions. ACE NY would oppose inclusion of this technology, however, regardless of the parameters of the RPS procurement process, and based upon the arguments in these comments.

³ For information on specific state RPS provisions, see the online Database of State Incentives for Renewables and Efficiency at: <http://www.dsireusa.org/summarytables/rrpre.cfm>.

VIII. PETITIONER FAILS TO PROVE TECHNOLOGY CHANGES SINCE LAST REJECTION BY THE COMMISSION

The Commission and the active parties to the proceeding addressed the inclusion of garbage incineration when the RPS was first adopted and rejected it.⁴ The Commission has since revisited the issue, mostly recently just last year, and again rejected it.⁵ The Commission deliberately left open the possibility of ineligible resources applying for inclusion but did so primarily to avoid freezing out any new and unexplored technologies that during the RPS become market ready. The technology being proposed for inclusion by Covanta is no different than that discussed and rejected previously in the RPS proceeding. The right to petition is thus, in our view, being abused and being used in conjunction with a political and public relations campaign that distorts the facts.

IX. A REVISED GENERIC ENVIRONMENTAL IMPACT STATEMENT WOULD BE REQUIRED

The Generic Environmental Impact Statement (GEIS) prepared for the RPS would need to be revisited if the Commission were to include garbage incineration as an eligible technology. The GEIS does not adequately address a number of the issues raised by this technology, especially in comparison with the technologies it would replace (true, non-emitting renewables) if accepted into the program, and the energy impacts of burning solid waste rather than reusing, composting and recycling solid waste. While we continue to strongly believe there is ample support for outright rejection of the technology as RPS eligible, if the Commission were to disagree with all of the sound arguments against eligibility, it should choose to conduct an EIS prior to determining the technology is eligible.

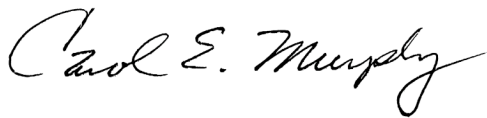
⁴ Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, *Order Regarding Retail Renewable Portfolio Standard*, September 24, 2004, p. 8.

⁵ Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, *Order Resolving Main Tier Issues*, April 2, 2010, p. 14-17.

X. CONCLUSION

ACE NY strongly opposes the inclusion of garbage incineration in the RPS. It is not a renewable energy resource, emits high levels of harmful pollutants, and is not deserving of ratepayer funds meant to support statewide clean energy goals. The petitioner fails to provide convincing evidence and presents misleading comparisons. Furthermore, inclusion of garbage incineration in the state's foremost and widely respected and supported renewable energy program will undermine public confidence in the program, which in turn jeopardizes the program and the public health and environmental and economic benefits it provides. Revising the RPS eligibility rules as Covanta has requested will undermine rather than contribute to the progress being made in growing New York's green energy economy.

Respectfully Submitted.

A handwritten signature in cursive script that reads "Carol E. Murphy".

Carol E. Murphy, Executive Director
Alliance for Clean Energy New York, Inc.
Albany, NY
August 19, 2011